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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,533	07/15/2003	Aaron L. Hill	ST8715US	7493
22203	7590	12/23/2004	EXAMINER	
KUSNER & JAFFE			MCKANE, ELIZABETH L	
HIGHLAND PLACE SUITE 310				
6151 WILSON MILLS ROAD			ART UNIT	PAPER NUMBER
HIGHLAND HEIGHTS, OH 44143			1744	

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/619,533	HILL ET AL.	
	Examiner Leigh McKane	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 9-14 is/are allowed.  
 6) Claim(s) 1-8 and 15 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

*Claim Rejections - 35 USC § 102*

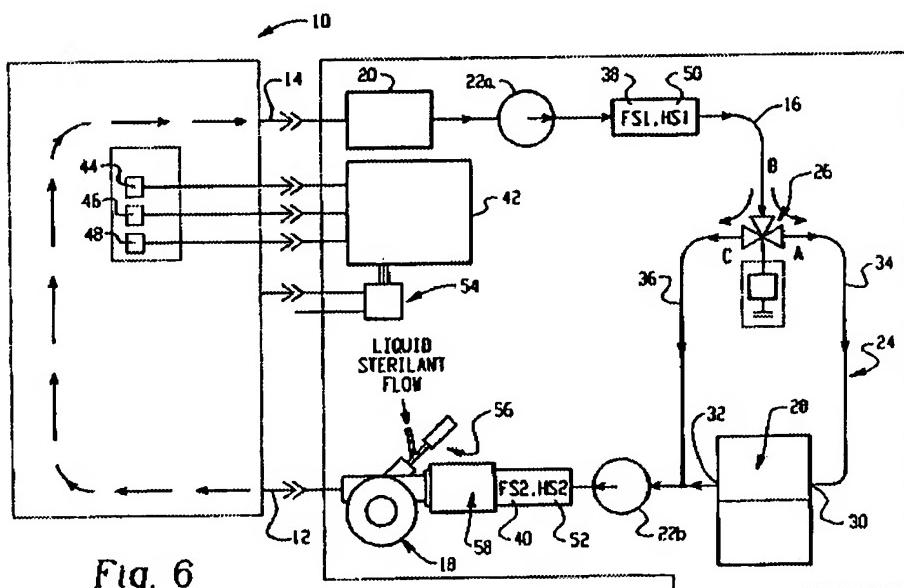
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Childers (U.S. Patent No. 5,906,794).

Childers teaches a vapor decontaminating system for a defined region 10. The system of Childers includes a chamber 10 defining the regions, a vaporizer 18 for generating vaporized hydrogen peroxide, a closed loop circulating system 12,14 for supplying the vaporized hydrogen peroxide to the region, a blower 22a, a destroyer 20 for breaking down the hydrogen peroxide, a



dryer 24 located between the destroyer 20 and the vaporizer 18, a heater 58 upstream from the vaporizer 18, a humidity sensor 50 down stream of the destroyer to sense moisture, and a controller 42. As to the controller 42

being “operable to determine the presence of vaporized hydrogen peroxide in said region based upon said electrical signals from said sensor,” the controller is programmable in any manner

desired and thus is "operable" to determine many parameters depending upon how it is programmed. The term "operable" is defined to mean "capable of". It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

*In re Hutchison*, 69 USPQ 138. Similarly, the phrases "for determining the presence of vaporized hydrogen peroxide in said region based upon data from said sensor" (in claim 6) and "for monitoring the humidity even...and determining the concentration..." (in claim 15), merely recite the intended use of the controller/processing unit. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, *Ex parte Masham*, 2 USPQ2d 1647.

### ***Allowable Subject Matter***

3. Claims 9-14 are allowed.
4. The following is an examiner's statement of reasons for allowance: Childers fails to teach or suggest a method of determining the presence of vaporized hydrogen peroxide wherein the presence of hydrogen peroxide is determined from a measurement of humidity downstream of a location where the hydrogen peroxide is destroyed. Childers determines the presence and concentration of hydrogen peroxide by direct concentration measurements within the sterilization chamber.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

Art Unit: 1744

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

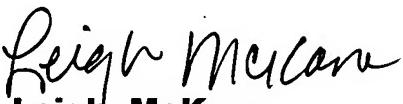
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cummings (USP 4,843,867) teaches determination of hydrogen peroxide concentration through measurements of water vapor concentration and dew point temperature within the sterilization chamber. Watling (EP 774263) discloses monitoring humidity of the gas exiting the chamber to determine hydrogen peroxide concentration.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (7:15 am-4:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1275. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Leigh McKane**  
**Primary Examiner**  
**Art Unit 1744**

elm  
20 December 2004